

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

VICTOR D. CRUZ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:21-CV-770-HEH
)	
SAMUEL I. WHITE P.C.,)	
)	
Defendant.)	

MEMORANDUM OPINION
(Dismissing Case for Failure to Serve Defendant)

Plaintiff Victor D. Cruz (“Plaintiff”) filed suit against Defendant Samuel I. White P.C. (“Defendant”), on January 27, 2022. (Compl., ECF No. 4.) As of this date, Defendant has not been served with process. Accordingly, on May 4, 2022, the Court issued a Notice of the Clerk’s Intention to Proceed with Abatement pursuant to Federal Rule of Civil Procedure 4(m) (the “Notice”). (ECF No. 7.) The Notice warned Plaintiff that the Court intended to dismiss the case unless he showed good cause why he had not served Defendant. (*Id.*) The Clerk mailed the Notice to Plaintiff at the address he provided to the Court, 3983 Bournemouth Bend, Williamsburg, Virginia 23188. (*See* ECF No. 8 at 2.) However, on May 23, 2022, the United States Post Office returned the Notice to the Court because it was “not deliverable as addressed” and the Post Office was “unable to forward” it. (*Id.* at 1.)

All parties have a continuing obligation to notify the Court of any change in mailing address. *Holdren v. W. Va. Coalition to End Homelessness*, No. 3:18cv88, 2018

WL 3132616, at *1 (N.D.W. Va. June 26, 2018). While the Court would ideally give Plaintiff a chance to show good cause why he has not rendered service on Defendant, without a current mailing address, the Court has no other reasonable way to contact Plaintiff.

Nevertheless, the Court “must dismiss the action without prejudice” if a plaintiff does not serve a defendant within 90 days after the complaint is filed. FED. R. CIV. P. 4(m). Here, Plaintiff filed his action on January 27, 2022, but has failed to serve Defendant almost 120 days after he filed his Complaint. Thus, upon due consideration the Court will dismiss Plaintiff’s Complaint without prejudice. *See* FED. R. CIV. P. 4(m).¹ As this dismissal is without prejudice, Plaintiff is free to refile his lawsuit with this Court.

An appropriate Order will accompany this Memorandum Opinion.



/s/

Henry E. Hudson
Senior United States District Judge

Date: May 27, 2022
Richmond, Virginia

¹ Moreover, since Plaintiff has not responded to Court orders and has not updated his mailing address, the Court could separately dismiss this action for a failure to prosecute. *See* FED. R. CIV. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–32 (1962) (allowing *sua sponte* dismissal after failure to prosecute).